



PRJ Publications

IJHRMRD

**International Journal of Human Resource
Management Research & Development**

Volume 10, Issue 1, January-June (2023)

ISSN: 2248-9401 (Print)

ISSN: 2248-941X (Online)

**www.prjpublication.com
prjpublication@gmail.com**

**No:57/2 Dr Muthu Lakshmi Road (LB Road), Adyar, Chennai-600 020,
Tamilnadu, India**

INTERNATIONAL JOURNAL OF HUMAN RESOURCE MANAGEMENT RESEARCH AND DEVELOPMENT (IJHRMRD)

ISSN: 2248-9401 (Print)

ISSN: 2248-941X (Online)

Volume 10, Issue 1, January-June (2023)

**Publishers of High-Quality Peer Reviewed Refereed Scientific,
Engineering & Technology and Management International Journals**

CHIEF EDITOR

Prof. C. Arthi Gandhimathi

Priyanka Research Journal (PRJ) Publication, Chennai, India

E-mail: prjpublication@gmail.com

website: www.prjpublication.com

Publisher

Priyanka Research Journal (PRJ) Publication

No:57/2 Dr Muthu Lakshmi Road (LB Road),
Adyar, Chennai-600 020,
Tamilnadu, India

Printed By

SRM Art Prints

No: 37, Rajaji Road
Tambaram West, Chennai - 600045
Tamil Nadu, India

© Copyright with PRJ Publication. No part of the publications may be reproduced in any form without prior permission of Chief Editor, PRJ Publication, Chennai
The Chief Editor/ Editorial Board and distinguished referees are in on-way responsible individually or collectively for the views, data and technical details presented in the journal.
The whole responsibility vests with authors of the article/ manuscript.

**INTERNATIONAL JOURNAL OF HUMAN RESOURCE
MANAGEMENT RESEARCH AND DEVELOPMENT (IJHRMRD)**

ISSN: 2248-9401 (Print)

ISSN: 2248-941X (Online)

Volume 10, Issue 1, January-June (2023)

TABLE OF CONTENTS

S.NO.	TITLE OF THE PAPER	AUTHORS	PAGES
1	SOCIAL JUSTICE AND INDIAN CONSTITUTION (COHESION AND COEXISTENCE)	Dr. V. RAMYA	1-6
2	SOCIAL JUSTICE THROUGH INDUSTRIAL LEGISLATION: GLITESH IN INDIA	Dr.D.UMAMAHESWARI	7-12
3	RULE OF LAW- A CRITICAL ANALYSIS	CHAYANIKA KALITA	13-19
4	SOCIAL JUSTICE UNDER THE PARLANCE OF THE JUDICIARY	Dr. SUJATHA. S and Ms. PRIYANKA S. JAGANNATH	20-26
5	INJUSTICE TO TRANSGENDERS IN MATTER OF PUBLIC EMPLOYMENT	Ms. MURSALIN.A	27-31
6	ARTICLE 21 OF INDIAN CONSTITUTION AND ACCESS TO ESSENTIAL MEDICINES TO THE POOR AND NEEDY: INDIAN PERSPECTIVE	Dr. RAHUL MISHRA	32-39
7	INCLUSIVE EDUCATION - THE PROBLEMS AND PERSPECTIVES ADHERING TO RIGHT TO EDUCATION ACT	R KANIMALAR	40-45
8	RULE OF LAW	A.ABIRAMI	46-51
9	THE INDIAN CONSTITUTIONAL LAW PERSPECTIVE OF SOCIAL JUSTICE	P. SANTHAKUMARI	52-58
10	DEMOCRACY UNDER INDIAN CONSTITUTION: AN OVERVIEW	Dr. K. CHITHRA DEVI and K. ASHWIN KUMAR	59-64
11	RIGHT TO OCCUPATIONAL HEALTH AT WORKPLACE – A DISQUISITION ON NATIONAL POLICY ON SAFETY, HEALTH AND ENVIRONMENT AT THE WORKPLACE	BLESSIE AHINO. J SUGANYA JEBA SAROJINI	65-73
12	SOCIAL JUSTICE AND FUNDAMENTAL RIGHTS MAHASWETHA DEVI'S DOPDI- THE RESILIENT HEROINE	Dr. K. SRILATA	74-80
13	CONTRIBUTION OF WOMEN MEMBERS OF CONSTITUENT ASSEMBLY IN THE MAKING OF THE INDIAN CONSTITUTION	TARANUM BABY	81-88
14	THE 103RD CONSTITUTIONAL AMENDMENT AND THE JUDICIAL DIALECTICS ON EWS RESERVATION: A CRITICAL ANALYSIS	DHANYA C.S	89-96

**SOCIAL JUSTICE THROUGH INDUSTRIAL LEGISLATION:
GLITESH IN INDIA**

Dr.D.Umamaheswari

Associate Professor, Department of Labour Law and Administrative Law, The Tamil Nadu

Dr.Ambedkar Law University, MGR Salai, Taramani Campus, Chennai

E-mail: drumamaheswari.d@gmail.com, Phone:9442787773

ABSTRACT

Existence of rights and duties in the dynamics of industrial legislations and its enforceability with the objective of maximum good ensures social justice. The socio, economic and political growth for the well-being of all, in the Indian democracy is ensured through the Constitution of India. The States in turn has garlanded itself, as it is its sole responsibility to ensure it through the serving of labour legislations. It is the States discretionary power as against the western concept of voluntarism in providing social justice through industrial laws in India. The working environment has been very dynamic with the changing socio-political environment in India. The statistic labour legislation under the influence of bureaucracy is in tug of war with the judiciary. Judiciary through its progressive interpretations in industrial laws has brought in the environment of unlearning and learning the concept of true social justice. Except for the passing influence of the Economic reforms and LPG policies of the countries the post Constitution era of industrial laws has seen a major step towards reframing and reforming labour laws in recent times. This research paper analyses the justifications given in the light of the Constitution of India as the prologue to the role of the State as protector and provider of social Justice. Further to evaluate in the light of changing dynamics of industrial relations, the concept of voluntarism as supplant to the role of the State to ensure social justice through the idea of collective effort of all the factors of Industrial relations instead of State's sole responsibility.

Keywords: Social Justice, Constitution, Industrial Relations, Reforms and Judiciary

Introduction

At the International level 18th and 19th century marked the recognition and codification of the labour right due to Industrial revolution, World War I and II, League of Nations, Chapter XIII of treaty of Versailles and followed by the formation of International labour Organisation(ILO)and United Nations Organisation (UNO). Since its inception in 1919 ILO has been channelled by the substantial principles of social justice. According to the Treaty of Versailles, 'Social Justice' is considered as an indispensable condition, for "universal and lasting peace".

Social Justice Through Industrial Legislation: Glitsh in India

India is one of the founder members of International Labour Organisation. Social Justice in Industrial relation in India rests upon the assurance of socio-economic and political equality among the employers and employees as the primary factors of Industrial relation. The third factor is the State. The role that the State plays by enacting and enforcing law for the same not only need to take into consideration the maximum good of the employees and employers but also the interest of the people under the category of consumers so as to fulfil its national and international obligations. To identify the concept of social justice in labour legislation it is necessary to have social legal understanding and its significance in Industrial relations.

Constitution of India and Social Justice:

Makers of Constitution of India understood the need to provide form of justice shall be the ultimate reflection of any freedom movement, through which each Indian will get best option to develop. Granville Austin describes the Indian Constitution making as being majorly contributed by "Consensus and Accommodation". Social change is possible through the effective use of Part III and Part IV as Fundamental Rights and the Directive Principles of State Policies in the Constitution of India. Part III declares all the rights and freedom that the people of India intends to secure for all its citizens and in some instance even to non-citizens. Part IV being juridical non-enforceable rights as held in *Minerva Mills Ltd. vs Union of India* Case. In this case the Supreme Court held that, there is no doubts as the court have attached importance to the preservation of human liberty and no less importance has been attached to some of the DPCP in our Constitution. The core of Constitution to provide for social Justice is in its Part III and IV. It is the way provided as Rights in Parts III, such as to these rights are not an end in themselves but are means to the end. Means are in Part III and end is in Part IV of the Constitution, together the two realise the idea of 'Justice' that the State seeks to secure to all its Citizens.

Constitution of India being the Supreme Law of India guiding the organs of the State in its formation and functions. Through its preamble the Constitution of India ensures Justice, social, economic and political along with other rights and duties, it also ensures to provide for freedom of thought and expressions etc. Part IV of the Constitution entitled the 'Directive Principles of State Policy' (DPSP) further directs the State to introduce policies for Social Justice; Securing adequate means of livelihood, ownership, control of material resources of the community for common good, ensuring equal pay for equal work; right to work, Just and humane conditions of work, maternity relief; ensuring the conditions of work with living wages for decent standard of life; workers participation in management as the sole of a welfare state. 'Labour' as the subject under the concurrent list of the 7th Schedule in the Constitution ensures the Central and the State does make law in concurrence with the Constitution. This has resulted in not less than 40 Central and more than 150 State Laws. With just 8.3 % of labour under the organised sectors it is surprising to see that every day the numbers of labour disputes keeps increasing as breach of one or the other set of laws. The plight of those labour force is worse as they do not come under the definition of organised sectors have very little or no labour law applies to them. This makes the job of a State much harder to ensure social justice to all the working class irrespective of any ceilings.

Judiciary and Social Justice:

Judiciary is the guardian of the Constitution. Its role as the protector of civil right has kept the faith of the people in constitution and the State. In the case of *Calcutta Electric Supply Corporation Ltd. vs Subhash Chandra Bose*, the Supreme Court of India held that, the right to social and economic justice is a fundamental right. F

Social Justice Through Industrial Legislation: Glitsh in India

Further under the *Consumer Education and Research Centre vs Union of India* Justice K.Ramaswami emphasised that, "...the Preamble and Art 38 of the Constitution the Supreme law envisages social justice as its arch to ensure life to be meaningful and liveable with human dignity..." Social Justice along with equality and dignity of persons are cornerstones of any social democracy. The Concept of Social justice that is engrafted under the Constitution of India consists of diverse principles essential for the orderly growth and development of the personality of every citizen. Social Justice is the dynamic device to protect and mitigate the problems of weaker section of the society who are prone exploitation as vulnerable sect in the process of Industrial development. The legitimate expectation, as the aim of social justice is to attain social economic and political equality in gender and environment.

Mohini Jain vs State of Karnataka and *Unnikrishnan vs State of Andhra Pradesh* case the Supreme court held that right to education is essential ingredient of any dignified life. In *Rural Litigation And Entitlement Kendra vs State Of U.P* and in *MC Mehta vs Union of India* case the Supreme court held that right to life includes the right to live in a clean and healthy environment. As a bench mark to right to environment it was brought under Article 21 as one of the essential ingredients of Right to life.

Social Justice under Industrial Laws:

The Courts in India have further played a pivotal role in bring about a right balance in the interpretation of different issues to protect the needed one while interpreting the different labour rights and duties. *Bandhua Mukti Morcha vs Union of India* case the Supreme Court held that, declined the practice of Bonded labour and Right to Life includes right to live with Human Dignity. In the case of *Vishakha and others vs State of Rajasthan* the Supreme Court held that the sexual harassment of women at work place is a denial of her right to live and personal liberty under Article 31. It is amounting to discrimination on the bases of sex and thus, violated the right to equality under Article 14 and 15 of the Constitution of India. *Paschim Bengal Khet Mazdoor Samity vs State of West Bengal* the Supreme Court held that, it is a failure on the part of the Government Hospitals to provide medical care to a person in need on time is violation of the person's right to life under Article 21 of the Constitution of India. The court as also guided the State in enforcing social justice by validating the social and economic policies framed by it. In *Sadhuram and Ors. vs State Through Food Inspector* court made a progressive interpretation and affirmed the Government action and held that, as between two others the Court would lean in favour of the weaker section of the society in its interpretation of any law. *Indra Sawhney vs Union of India* upheld the constitutionality of 27% reservation for socially and economically backward classes of the society under central government services. Hence, brought in a balance between the distribution of benefit and distributive justice. *State of Madras vs Champakam Dorairajan* case the Supreme Court held that, under the admission to educational institution the classification on the bases of religion, race and cast in the executive order as Communal G.O. is unconstitutional as it violates Fundamental right guaranteed under Article 29 (2) and *M. R. Balaji And Others vs State Of Mysore* held that as the ceiling limits of reservation shall not be more than 50%.

As the Guardian of rights of the people for the Economic Justice the Supreme Court's interpretation has enabled for the removal of social economic inequalities. In the case *J.K. Cotton Spinning & Weaving Mills Company Ltd. vs State of U.P* the Supreme Court held that, in Industrial sector there cannot be just abstract understanding of the concept of social justice. It would be just and fair only with the application of reality and pragmatic notions of life as way to maintain good Industrial relation between employer and employees.

Social Justice and the issues related to it:

Effectiveness of Law to provide for social justice runs from the producers of raw material till the product reaches a consumer. In this process the survival of fittest applies and market everywhere tends to exploit the weaker people. The role of the Government is to protect people from such exploitation through law for Social Justice.

When the profit is the motive it might tend to exploit the worker the rights like less wages and more work, the law can step in to protect the exploitation like Minimum Wages Act. In case of protections of interest of the producers as well as consumers is as essential as that of the workers' rights. Fundamental rights like right against exploitation ensured through provision against the concept of Bonded labour, child Labour, and conditions in employment at Hazardous Industries. The government also ensures the implementation of these law. Hence the enforcements of the laws are also equally significant for a State to ensure Social Justice. Social Justice brings about a balance or compromise between right and liberty of the social group which includes produces, workforce and consumers.

In case of replacement of handlooms to power looms does have its prose and cons. Such as lose of employment of manual skilled workers and replacement of it with technical skills. Increase in production with less time and energy and hence more product with less investment and manpower. This situation needs to bring about a balance through law to protect the weak from powerful. In India the role of State comes in through making of law, enforcement and upholding the laws and thus control the activity to ensure Social Justice.

Bhopal Gas Tragedy:

The case study of the Bhopal Gas Tragedy under the *Union Carbide Corporation vs Union of India*, would enable the required pragmatic analysis to understand the level of responsibility that a State has in the process of Industrial development and economic reconstruction of a country after 200 long years of colonisation.

The Bhopal Gas Tragedy happened on 2nd of December 1984. There was a leakage of Methyl-isocyanate a highly poisons gas from a United States Based pesticide producing company functioning in Bhopal, Madhya Pradesh. The accident took place during the mid-night, when the people around the Union Carbide Corporation(UCC) was fast asleep. There was mass number died and the after effects of this event led it to be considered this as mass disaster. The evidence related to the accident made it evident that the place and working regulation of the establishment of this is UCC was reportedly breached. The compensation was much less 470 million from that of 3 Billion amount of claim by the victims of the mass disaster.

Victims of Bhopal Gas Tragedy:

Valuating and quantifying the life of the worker who are economically and politically weak is the factor that influences in understanding the result of this disaster in India. The reasons being less wages, less safety measures, lenience and loopholes in regulatory authorities and statute engraved safety measures, less training period and cheap labour was pull factors available in India when compared to that of America as a choice for established of this US based company. Accordingly, due to these loopholes in Industrial laws in India, the safety training was brought down from 6 months to 15 days, works for MIC reduced from 12 to 6. Night shift was stopped for the reduction of cost of production and aiming at more profit. The computerised warning system was replaced by manual gauges and human senses to detect the gas leaks. Emergency evacuation plant was not in Bhopal, which intern led to the major effect of this leakage leading to catastrophic disaster and not just accident.

Social Justice Through Industrial Legislation: Glitish in India

The other inviting factors were in the form of easy availability of surplus workers, less bargaining power made the work force vulnerable to exploitation and this in turn added up to the futuristic realisation of the ignored personal as well as environmental safety concepts in India. Steps to provide the safety is necessary Article 21 of the Constitution, hence accidents are prone to happen, but the choice of profit over the probability of the accident diverted the Industries towards profit at the risk of safety, at the cost of worker's life thus, leading to the imbalance in the form of Justice.

The study of the whole process that led to this disaster made is clear that, there was lax in the safety law in India and available laws were not implemented. In Bhopal gas tragedy the licence was given by the then Government to establish this industry under 'non-hazardous' category and as such paved way to established it with a highly populated residence. This enabled the availability of labour force from local residents under the veil of higher 'Employment Opportunity' and 'Foreign Direct Investment' in India. The Government's Labour inspector as administrator of the Industrial laws approved the procedure in the plant in spite several of incidents of leak in the past. The corruption at the enforcement machinery was again a contributor of the disaster. With the scheme of Liberalisation, Privatisation, and Globalisation for encouraging economic reforms and Industrial development, there is a greater need of stronger laws to protecting workers right with proper enforcement of the laws made for in India.

This case led to the understanding of the loopholes in the law and its implementation in India. This case was an eye opener in identifying several other factors necessary for development and social justice in any country. It wisteda new vision in the realisation of environment protect being as important factor in any Industrial law as that of safety of any worker. Till 1984 environment was treated as free entity and one can use it, pollute the environment without any restrictions. This disaster brought the issue of environment to the forefront and led to the reformation in the environment protection law in India. The concept of polluter pay principle was introduced and then came the interpretation that, the polluter has to compensate any loss and the industries cannot pollute in the name of the Industrial development. This case led to introduction of multiple dimension of the Industrial development. In *Subash Kumar vs State of Bihar*¹ case, Supreme Court held that right to life is 'Fundamental Right' and the right to pollution free environment is an integral part of right to life.

The disparity of law on right and environment as a public facility for the people at large is need of the social justice in any society. In this case the court's order on environmental issues was the first step towards the reforms. This brought in the changes such as, the Industries must be closed and moved out of residential area. But, that was undeniable that the closure of Industries led to unemployment problem. The relocation also led to shift of the pollution from that of residential area to the non-residential area near the new locations. Issue of safety condition of workers, and the growing middle class people's right was unaddressed. The shift of concern over environment protection and beautification of the cities led to the removal of slums and platform residents the middle class people right was at the cost of the poor workers. The benefits were unevenly distributed with exploitation of available resources and challenge for the State was now to look for law balancing these rights as per social Justice. Move to cleaner technology and process, fine the pollutant, lively hood as well as the community right is also to be brought in balance under the Industrial development safe environment. The development in any country requires a holistic view, such as it is necessary for the issues related to environment protection is considered along with Industrial development, only if environment is taken as public facilities.

Conclusion and Suggestions:

Summing up, the study on Industrial law and Social Justice. The need is to bring about the balance between profit motive and Social Justice. Generalisation of any statement cannot bring in reforms. Desirability of profit need to be protected as against the exploitation of works. The law can bring about change via profit without exploitation. The role of State is to ensure social justice by making, enforcing and upholding appropriate Industrial laws. Along with State people can also bring up their awareness and exert pressure so that both private company and different organs of the State act in the interest of the society consisting of employer, worker, environment and right to life for social Justice. It is evident that democracy for power has not brought an end to denial of social justice. The judicial interpretation under litigate of social economic and political justice may not give social justice and judicial enforcement, this may not fulfil the objective of the right for Social Justice in practice. Even with the compliance in terms of individual claims for social Justice it is still insignificant in understanding the right on a larger societal perspective. The Courts do have a crucial role to play in judicial enforcement in advancement of rights and its benefits. The requirement is to broaden the societal perspective in interpreting the political perspectives. Bringing up a Labour Code and that law into practice is possibly the way to achieve social justice, only if there is democracy in the industrial legislation via involvement and consent from all the factors of Industrial relations. This process is not to impose restraint on any one factor in Industrial relations like employer or the State as such and not to move towards non-intervention or free market theory for enabling the concept of survival of the fittest but, it is an expanded meaning of adjustment or compromise in a societal setup of achieving the true objective of Social Justice via Industrial legislations.

REFERENCE

1. The Constitution of India
2. Sidney Isaacs, The Indian Constitution: Cornerstone of a Nation and Constitutional Government in India, p.no. 393-394, International Affairs, Volume 43, Issue 2, April 1967)
3. Minerva Mills Ltd. vs Union of India AIR 1980 SC 1789
4. Calcutta Electric Supply Corporation Ltd. vs Subhash Chandra Bose (1992) 1 SCC 441
5. Consumer Education and Research Centre vs Union of India 1995 AIR 922
6. Mohini Jain vs State of Karnataka 1992 AIR 1858
7. Unnikrishnan vs State of Andhra Pradesh 1993 AIR 217
8. Rural Litigation and Entitlement Kendra vs State Of U.P 1985 AIR 652
9. MC Mehta vs Union of India AIR 1987 SC 1086
10. Bandhua Mukti Morcha vs Union of India 1984 AIR 802
11. Vishakha and others vs State of Rajasthan (1997) 6 SCC 241
12. Paschim Bengal Khet Mazdoor Samity vs State of West Bengal 1996 SCC (4) 37
13. Sadhuram and Ors. vs State Through Food Inspector AIR 1967 MP 122
14. Indra Sawhney vs Union of India AIR 1993 SC 477
15. State of Madras vs Champakam Dorairajan AIR 1951 SC 226
16. M. R, Balaji and Others vs State of Mysore 1963 AIR 649
17. J.K. Cotton Spinning. & Weaving Mills Company Ltd. vs State of U.P (1990) 4 SCC 27
18. Carbide Corporation vs Union of India AIR 1988 SC 1531
19. Subash Kumar vs State of Bihar AIR 1991 SC 420
20. Dr.Rhyddhi Chakraborty, "Case Study Bhopal Gas Tragedy (1983-84)" available at,<https://ethicalengineer.ttu.edu/studies/case-study-bhopal-gas-tragedy>,(last visited on 30/12/2022)